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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 ) No. CV 04- (VBK)  
12 )  
13 Plaintiff, ) ORDER RE CIVIL TRIAL  
14 )  
15 v. ) Discovery Cut-Off:  
16 )  
17 ) Motion Filing Cut-Off:  
18 )  
19 Defendant. )  
20 )  
21 )

22 The above matter is set before the Honorable Victor B. Kenton,  
23 Courtroom H, United States Courthouse, 312 North Spring Street, Los  
24 Angeles, California 90012.  
25

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**Pre-Trial and Trial Dates**

1. The Court has ordered the dates as indicated above and described as follows:

a. Discovery Cut-Off. This is the last date to complete discovery, including expert discovery, and the resolution of any discovery motions.

b. Motion Filing Cut-Off. The Court hears motions on Tuesdays at 10:00 a.m. The motion cut-off date is the last day motions may be filed. The cut-off date applies to all motions except motions in limine.

Motions in limine, i.e., those pertaining only to evidentiary matters, shall be filed in accordance with the requirements of Local Rule 7. Parties must notice motions in limine for hearing no later than the Monday eight days before the Tuesday trial date. If that Monday is a holiday, the motions must be noticed for hearing on the preceding Monday. Motions in limine may not be used as a substitute for a summary judgment motion.

c. Pre-Trial Conference dates, dates for hearing on motions in limine and trial dates will be set after motions have been heard or notice has been given that no motions will be filed. Each party appearing in this action shall be represented at the Pre-Trial Conference and at all pre-trial meetings by the lead trial counsel. Counsel should be prepared to discuss streamlining the trial, including bifurcation, presentation of testimony by deposition excerpts, time limits, stipulations as to undisputed facts, and qualification of experts by admitted resumes.

d. Trial. Trials are conducted Tuesday through Friday, from 9:30 a.m. to 4:30 p.m. Counsel should plan to meet with the Court at

1 9:00 a.m. on the first day of trial. Jury selection generally takes two  
2 hours. Counsel must be ready to proceed with opening statements  
3 immediately thereafter.

#### 4 5 Discovery

6 2. Counsel shall initiate all discovery other than depositions at  
7 least forty-five (45) days prior to the cut-off date. The Court will  
8 not approve stipulations between counsel which permit responses to be  
9 served after the cut-off date, except in unusual circumstances and for  
10 good cause shown.

11 3. Counsel shall commence all depositions at least five (5)  
12 working days prior to the cut-off date. **Counsel shall lodge all**  
13 **original depositions to be used in trial with the Courtroom Deputy Clerk**  
14 **on the first day of trial.**

15 4. The required expert witness disclosures shall be made seventy  
16 (70) days before the discovery cut-off date.

#### 17 18 Settlement

19 5. As set forth in the Court's Standing Order, the parties in  
20 every case must elect a settlement procedure, pursuant to Local Rule 16-  
21 14. The final meeting with the parties' settlement officer must take  
22 place no later than 45 days before the Pre-Trial Conference. Given the  
23 high costs of litigation and the enormous commitment of resources that  
24 a trial requires, the Court urges the parties to explore every option  
25 for resolving their disputes short of trial. If the Court may assist in  
26 the process, please so notify the Courtroom Deputy Clerk, Roxanne Horan,  
27 at 213-894-1831.

1                                    **Preparation for the Pre-Trial Conference**

2            6. Compliance with the requirements of Local Rule 16 is  
3 mandatory. Counsel shall submit carefully prepared Memoranda of  
4 Contentions of Fact and Law (which may also serve as the trial briefs)  
5 and Proposed Pre-Trial Conference Order in accordance with the  
6 provisions of Local Rules 16-2.8 through 16-6. The Proposed Pre-Trial  
7 Conference Order shall conform to the example set forth in Appendix A to  
8 the Local Rules, modified as necessary to comply with this order.

9            7. The Memoranda of Contentions of Fact and Law, Exhibit Lists,  
10 and Witness Lists shall be served and filed no later than twenty-one  
11 (21) calendar days before the Pre-Trial Conference. The Proposed Pre-  
12 Trial Conference Order shall be lodged fourteen (14) calendar days  
13 before the Pre-Trial Conference. Adherence to time limits is essential  
14 to in-chambers preparation.

15            8.    **Proposed Pre-Trial Conference Order.**

16            a. The Proposed Pre-Trial Conference Order must contain a  
17 Table of Contents.

18            b. Under paragraph 1, list each claim, counterclaim, or  
19 defense that has been dismissed or abandoned.

20            c. The factual issues in dispute should track the elements  
21 of a claim or defense upon which the jury would be required to make  
22 findings. Counsel should state issues in ultimate fact form, not as  
23 evidentiary fact issues (i.e., "was the defendant negligent," "was  
24 defendant's negligence the proximate cause of plaintiff's injury;" not  
25 "was the plaintiff standing on the corner of 5<sup>th</sup> and Spring at 10:00 a.m.  
26 on May 3").

27            d. Issues of law should state legal issues upon which the  
28 Court will be required to rule after the Pre-Trial Conference, including

1 during the trial, and should not list ultimate fact issues to be  
2 submitted to the trier of fact.

3 e. If expert witnesses are to be called at trial, each party  
4 must list and identify its respective expert witnesses. Failure of a  
5 party to list and identify an expert witness in the Proposed Pre-Trial  
6 Conference Order shall preclude a party from calling that expert witness  
7 at trial.

8 9. **Summary of Witness Testimony and Time Estimates**

9 Counsel shall prepare a list of their witnesses, including a brief  
10 summary (two to three paragraphs) of each witness's expected testimony  
11 and an estimate of the length of time needed for direct examination.  
12 Counsel shall exchange these lists with opposing counsel. **Counsel shall**  
13 **jointly file a single list of witness testimony summaries, including**  
14 **estimates for direct examination of their own witnesses and estimates**  
15 **for cross-examination of opposing witnesses.** These statements shall be  
16 filed at the time counsel lodge the Proposed Pre-Trial Conference Order,  
17 i.e., fourteen (14) days before the Pre-Trial Conference.

18  
19 **Exhibits**

20 10. Counsel are to assemble their exhibits by placing them in 3-  
21 ring binders, with each exhibit separated by a tabbed divider on the  
22 right side. Counsel shall provide original exhibits for the Courtroom  
23 Deputy Clerk and a duplicate set for the judge. The original exhibits  
24 shall be tagged with the appropriate exhibit tags in the upper and lower  
25 right corner of the first page of each exhibit. Each binder shall  
26 contain a Table of Contents.

27 Counsel must comply with Local Rule 26-4 when numbering the  
28 exhibits. The Clerk's Office, Room G-8, 312 North Spring Street, Los

1 Angeles, can supply counsel with appropriate exhibit tags.

2 11. The Court requires the following to be submitted to the  
3 Courtroom Deputy Clerk on the first day of trial:

4 a. The original exhibits with the Court's exhibit tags.  
5 Plaintiff shall use yellow tags; defendant shall use blue tags. Each  
6 tag shall be stapled to the front of the exhibit on the upper right  
7 corner and include the case number, case name, and exhibit number.

8 b. One bench book with a copy of each exhibit for the  
9 Court's use, tabbed as described above; a copy of the witness list(s).

10 c. Three (3) copies of exhibit lists.

11 d. Three (3) copies of witness lists in the order in which  
12 the witnesses will be called to testify.

13 12. All counsel are to meet no later than ten (10) calendar days  
14 before trial to discuss and agree to the extent possible on issues  
15 including foundation, waiver of the best evidence rule, and which  
16 exhibits may be received into evidence at the start of trial.

17  
18 **Trial Preparation for Jury Trials**

19 13. Fourteen (14) calendar days prior to counsel's Rule 16-2 pre-  
20 trial meeting, counsel shall exchange proposed jury instructions  
21 (general and special) and special verdict forms (if applicable). Seven  
22 (7) calendar days prior to the Rule 16-2 meeting, counsel shall exchange  
23 any objections to the instructions and special verdict forms. Prior  
24 to, or at the time of the Rule 16-2 meeting, counsel shall meet and  
25 confer with the goal of reaching agreement on one set of joint jury  
26 instructions and one special verdict form.

27 14. The Court directs the parties to make every attempt to agree  
28 upon the jury instructions before submitting them to the Court. The

1 Court expects counsel to agree on the substantial majority of jury  
2 instructions, particularly when pattern instructions provide a statement  
3 of applicable law. When the Manual of Model Civil Jury Instructions for  
4 the Ninth Circuit provides a version of an applicable requested  
5 instruction, the parties should submit the most recent version of the  
6 model instruction, modified as necessary to fit the facts of the case  
7 (e.g., inserting names of parties to whom instruction applies). Where  
8 language appears in brackets in the model instruction, counsel shall  
9 select the appropriate text and eliminate the inapplicable bracketed  
10 text. Where California law applies, counsel are directed to use  
11 California Jury Instructions -- Civil (8<sup>th</sup> ed.) ("BAJI"). If neither of  
12 the above sources is applicable, counsel are directed to use the  
13 instructions from O'Malley, Grenig & Lee (formerly Devitt, et al),  
14 Federal Jury Practice and Instructions (latest edition). Each requested  
15 jury instruction shall cover only one subject or principle of law and  
16 shall be numbered and set forth in full on a separate page, citing the  
17 authority or source of the requested instruction (except for the "clean"  
18 jury copy discussed below).

19 15. When the parties disagree on an instruction, the party  
20 opposing the instruction must attach a short statement (one to two  
21 paragraphs) supporting the objection, and the party submitting the  
22 instruction must attach a short statement supporting the instruction.  
23 Each statement should be on a separate page and should follow directly  
24 after the disputed instruction.

25 16. The parties ultimately must submit one document or, if the  
26 parties disagree over any proposed jury instructions, two documents. If  
27 the parties submit two documents, those documents shall consist of: (1)  
28 a set of Joint Proposed Jury Instructions and (2) a set of Disputed Jury

1 Instructions, along with reasons supporting and opposing each disputed  
2 instruction in the format set forth in paragraph 15.

3 17. The parties must file proposed jury instructions seven (7)  
4 calendar days before the Pre-Trial Conference. If the court is closed  
5 that day, counsel shall file the proposed instructions the preceding  
6 Friday. No later than 5:00 p.m. on the date such instructions are due,  
7 the parties must submit conformed courtesy copies to Judge Kenton's  
8 chambers. Counsel shall also provide the Court with a 3½ inch diskette  
9 compatible with WordPerfect 6.1 or 7.0 containing the proposed jury  
10 instructions, in accordance with this paragraph and paragraph 18.

11 18. The Court will send a copy of the instructions into the jury  
12 room for the jury's use during deliberations. Accordingly, in addition  
13 to the file copies described above, the diskette submitted with the jury  
14 instructions shall contain a "clean set" of Joint Proposed and/or  
15 Disputed Jury Instructions, containing only the text of each instruction  
16 set forth in full on each page, with the caption "Court's Instruction  
17 No. \_\_\_" (eliminating titles, supporting authority, indication of party  
18 proposing, etc.).

19 19. An index page shall accompany all jury instructions submitted  
20 to the Court. The index page shall indicate the following:

- 21 a. The number of the instruction;
- 22 b. A brief title of the instruction;
- 23 c. The source of the instruction and any relevant case  
24 citations; and
- 25 d. The page number of the instruction.

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EXAMPLE:

<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
1	Trademark-Defined (15 U.S.C. §1127)	9 <sup>th</sup> Cir. 15.3.2	7

20. Along with the jury instructions, counsel shall submit any necessary special verdict form seven (7) calendar days before the Pre-Trial Conference.

21. Counsel may, but need not, submit brief proposed voir dire questions for the jury seven (7) calendar days before the Pre-Trial Conference. The Court will conduct its own voir dire after consulting any proposed voir dire submitted by counsel.

22. Counsel shall prepare a joint statement of the case for the Court to read to the prospective panel of jurors prior to the commencement of voir dire. The statement should not exceed one page. The statement shall be filed with the Court seven (7) calendar days before the Pre-Trial Conference.

#### **Trial Preparation for Court Trials**

23. Fourteen (14) calendar days before the trial date, each party shall prepare and serve on opposing counsel copies of the proposed Findings of Fact and Conclusion of Law. Each party shall review the other party's proposed Findings and Conclusions and make such changes in the party's own proposed Findings and Conclusions as necessary following such review.

24. Seven (7) calendar days before the trial date, each party shall lodge two copies of its proposed Findings of Fact and Conclusions of Law with the Court together with a copy of diskette. Each party

1 shall serve other parties if changes have been made. The parties shall  
2 be prepared to submit to the Court, and to exchange among themselves,  
3 supplemental Findings of Fact and Conclusions of Law during the course  
4 of the trial.

5 **IT IS SO ORDERED.**

6  
7 DATED: \_\_\_\_\_

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8 VICTOR B. KENTON  
9 UNITED STATES MAGISTRATE JUDGE  
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